



An
Bord
Pleanála

Inspector's Report ABP-301427-18

Development	Retention permission for minor alterations to house, granted ref. F13A/0056 (currently under construction), including a single-storey extension to the rear (9 sq.m), and all associated works.
Location	26B Rivervalley Grove, Swords, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0035
Applicant(s)	CQA Design & Build
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Michelle Lynch
Observer(s)	None
Date of Site Inspection	17 th November 2018.
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.044ha, is located within suburban Swords, Co. Dublin. It is located on the south side of Rivervalley Grove, at the head of that cul de sac. The site is flat and contains a recently-completed two-storey house. External finishes are brick and plaster, with black tiled roof. The garden has recently been landscaped. There is one mature, deciduous tree in the corner of the rear garden. There is on-site parking for up to five cars. There is a pedestrian entrance to the site from Forest Road. The house is not yet occupied.
- 1.2. To the north, the site abuts the curtilage of no. 27A Rivervalley Grove, a recently-constructed two-storey house – the boundary with which is a 1.2m high wall which is capped and plastered. To the east, the site abuts Forest Road – the boundary with which is a recently-erected 1.8m high metal post & chainlink fence. To the south, the site abuts a green area to the side of no. 1 Boru Court – the boundary with which is a 2.0-2.4m high wall, which is capped and plastered. To the west, the site abuts the curtilage of no. 26A Rivervalley Grove (a large two-storey house constructed within the side garden curtilage of no. 26) – the boundary with which is a 1.8m high wall which is capped.

2.0 Proposed Development

Permission sought on 30th January 2018, for development comprising retention of alterations to previously approved house at no. 26B (Ref. F13A/0056), currently nearing completion, and including a single-storey extension to the rear (9m²). The house is connected to public watermains and sewers.

3.0 Planning Authority Decision

By Order dated 26th March 2018, Fingal County Council issued a Notification of decision to grant planning permission subject to 11 no. conditions – the principal ones of which can be summarised as follows-

1. Development to be retained in accordance with plans and particulars submitted with the application.
3. Within four weeks of the final grant of permission, revised elevational drawings shall be submitted for the written agreement of the PA to show the window at stairs/landing level to be fitted with obscured glazing and the window at attic level to be removed and plastered over.
4. Attic floor space shall be used for storage only and shall not provide any habitable space. Any change-of-use to this area shall be the subject of a separate planning application.
5. Development described in Classes 1 or 3 of Part 1 of Schedule 2 of the 2001 Regulations, shall not be carried out within the curtilage of the house, without a prior grant of planning permission.
6. Soakway approved under permission ref. F13A/0056, shall be amended appropriately to take account of the increased run-off area. Details shall be submitted for the written agreement of the PA.
11. Requires payment of a development contribution of €773.

4.0 Planning History

F13A/0056: Permission granted for construction of two detached houses on a larger site – of which the current appeal site comprises the southern of the two houses. On appeal by a 3rd Party to An Bord Pleanála (**PL 06F.242259**), permission was granted on 20th January 2014. The house on the appeal site is largely complete, but has not been constructed in accordance with the plans. Condition 2 stated-

- (a) The relocated House B shall be reduced in width so that no part of the house is within 900 millimetres of the boundary to the west.
- (c) The window serving the kitchen in the west elevation of House B shall be omitted.

F17A/0620: Permission sought for alterations to the two houses granted permission ref. F13A/0056 to provide for attic accommodation and revised window and door locations to both houses. The application was withdrawn.

F18B/0071: Refers to an application for alterations to no. 27B, lodged on 6th April 2018, to include-

- Omission of double-door opening on the west elevation.
- Additional window opening on the east elevation.
- Double-door opening in place of window opening on north elevation.
- Amended sill level on north elevation.
- Omission of a window on the west elevation.
- Additional of a double-door opening on the east elevation.

This application was returned as 'invalid', arising from the current appeal on the same site (ABP-301427-18), to An Bord Pleanála.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Fingal County Council Development Plan 2017-2023. The site is zoned 'RS' – "To provide for residential development and protect and improve residential amenity".

5.2. Natural Heritage Designations

There are no such designations either within or immediately abutting the appeal site. The closest such are the Malahide Estuary SAC (Site code 000205) and the Malahide Estuary SPA (Site code 004025) – located some 2.5km to the northeast.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal from Michelle Lynch, 26A Rivervalley Grove; received by An Bord Pleanála on 16th April 2018, can be summarised in bullet point format as follows-

- The decision of ABP required at condition no. 1 that the development be carried out in accordance with the plans and particulars submitted. Condition

6 related to Classes 1 & 3 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001. An application for retention is a clear indication that the developer has not abided by the conditions imposed by An Bord Pleanála.

- There was a considerable amount of correspondence between the developer and Fingal Co. Council, relation to a small hall window on the western elevation. There are now two large stair windows within this western elevation. Condition 2(c) of the Board's permission required the removal a kitchen window in the western elevation of this house. This window was removed in the final plans and replaced by a small hall window. That window has now been removed, and replaced with the two staircase windows. These windows directly overlook the eastern gable of the appellant's house, and face directly into a bathroom. In the original plans there was a single bathroom window in this elevation, with frosted glass.
- The Planning Officer for Fingal Co. Council noted that the house plans were not the same as those granted permission by the Board – particularly the single-storey lounge/dining area to the rear. The entrance arrangements and two-storey gable to the front of the house have been handed. Whilst the set-back from the western boundary accords with the requirement of condition 2(c) of the Board's permission, the redesign of the dwelling constitutes a material alteration of the approved development which is outside the scope of the planning condition.
- On 2nd June 2017, Fingal Co. Council wrote to the applicant in relation to the floor plans being different from that approved by the Board.
- The two-storey extension to the rear now runs right up alongside the boundary wall to the east of the appellant's house. This results in overshadowing.
- The bulk of this house is overbearing when viewed from the appellant's house.
- The house, as constructed, has been reversed – so that the entrance door is now next to the appellant's house. The entire internal structure has been reversed.

- The ridge-line height of the house (and the one to the north), is greater than that of existing houses on the road – borne out by colour photographs included within the appeal.
- The houses are for sale as four-bedroomed units, despite the fact that permission was granted for three-bedroom units only.
- On 26th March 2018, retention permission was granted. Condition 3b stated- ‘The window at attic level in the western elevation to be removed and plastered over’. Condition 4 stated- ‘The attic floor space shall only be used for storage/non habitable purposes and shall not provide for any additional non habitable space.
- On 6th April 2018 an application for retention was made to Fingal County Council, to retain the window and convert the attic space (ref. F18B/0071). The developer is determined to market the house as a four-bedroomed unit.
- The Planning Officer’s report of 23rd March 2018, makes clear that the house as built, is very different from that for which permission was granted-
 1. The design of the house has been mirrored.
 2. The width has been increased from 6.7m to 6.95m.
 3. The western elevation has increased from 10.05m to 13.45m.
 4. The height has increased from 9.065m to 9.097m.
 5. The internal layout has been revised.
 6. The window locations have all changed, as a result of the “handing” of the design.

The Planning Officer concluded that the assessment of retention application should be on the basis of the application as if it was a new application.

- It appears from this application that there is no need to adhere to any planning conditions: where retention permission can be sought.
- It is not possible to comply with condition no. 1 of parent permission ref. F13A/0056, as the house has not been constructed in accordance with plans and particulars submitted.

- There has been a constant stream of construction vehicles to the site over the past six months, which has resulted in nuisance for the appellant.
- The appellant had to relocate a satellite dish on her gable wall, as a result of this development.

6.1.2. The appeal is accompanied by the following documentation of note-

- Board Inspector's Report – ref. PL 06F.242259.
- Annotated Planning Officer's Report from Fingal Co. Council – dated 23rd March 2018.

6.2. Applicant Response

The response of CQA Design & Build, was received by An Bord Pleanála on 14th May 2018. The relevant planning arguments can be summarised in bullet point format as follows-

- The house will be constructed in compliance with regulatory standards.
- The reason for the application was that the house was not constructed in accordance with approved plans ref. F13A/0056.
- Condition 3b of the Notification of decision to grant planning permission, requires that the window at second floor level be omitted, whilst Condition 4 requires that any proposal for habitable space at attic level will require a separate planning permission.
- A new application has been submitted to Fingal Co. Council for retention of the window at attic level, and to use the attic as habitable accommodation. The window is intended to light a stairwell, and will be fitted with obscured glazing. The appellant has also objected to this application.
- The single-storey extension to the rear will not have any significant impact on the appellant's amenity. It is situated behind her shed.

6.3. Planning Authority Response

The response of Fingal Co. Council, received by An Bord Pleanála on 8th May 2018, indicates that the alterations to the permitted unit have been assessed, and when

fully completed, are not anticipated to negatively impact on the residential amenity of adjoining residential units. The issue of the attic conversion has not been assessed to date, as this application was only recently submitted – ref. F18B/0071.

6.4. **Observations**

None received.

7.0 **Assessment**

The principal issue of this appeal relates to residential amenity.

7.1. **Development Plan Considerations**

The site is zoned for residential use in the current Plan. I would see no difficulty with the proposed development on zoning grounds. Permission has already been granted for a house on this site.

7.2. **Layout & Design**

7.2.1. The relevant planning history of this site relates to a decision of the Board to grant planning permission ref. PL 06F.242258 on 20th January 2014. The house was constructed, but not in accordance with the planning permission granted. The current application for retention and completion was lodged on 30th January 2018, and the PA issued a Notification of decision to grant planning permission on 26th March 2018: this decision is the subject of the current appeal. Subsequent to receipt of the Notification of decision to grant planning permission, the applicant lodged another planning application for alterations to the house (ref. F18B/0071), on 6th April 2018. Arising from a 3rd Party appeal lodged against the decision on the current case (ref. F18A/0035), the later application was deemed invalid by the PA.

7.2.2. The area of the house is stated to be $125\text{m}^2 + 9\text{m}^2 = 134.0\text{m}^2$. I note that the floor area for House B, as per permission ref. F13A/0056 (PL 06F.242259), was stated to be 139.34m^2 . The house, as constructed, is clearly a handed version of the permitted house – but even in this, the internal layout is entirely different, not to mention the fenestration and door access arrangements. The public notices for the

proposed development describe it as- 'retention planning permission for development at no. 26B Rivervalley Grove, Swords, Co. Dublin. The development consists of minor alterations to the house previously granted under Reg. Ref. F13A/0056 (and currently under construction) including a single storey extension to the rear (9 sq.m) to the side of the approved single storey extension and all associated site works'. I consider that the public notices could be regarded as somewhat misleading in the use of the term 'minor alterations to the house previously granted'. However, as the application specifically mentions the words 'retention permission', and the person most likely to be affected by the development was aware of the application and made a submission to Fingal Co. Council, (and subsequently appealed the Notification of decision to grant planning permission to An Bord Pleanála), it is possible to assess and make a recommendation on this application for retention – for alterations which are most certainly not 'minor'.

- 7.2.3. The handing of the house on the site makes a nonsense of condition 2(c) of the Board's decision ref. PL 06F.242259, as the kitchen is now on the opposite side of the house. I would not, however, be concerned in relation to windows in the eastern elevation of the house, as these address the busy Forest Road, and could not result in any claim of overlooking or loss of amenity. The windows in the western elevation of the house are of most concern. Condition 2(a) of the Board's decision ref. PL 06F.242259, has been respected, in that the house has been set back a minimum of 0.9m from the western boundary – the common boundary with the appellant's house at no. 26A. The western (gable) elevation contains two windows – at first floor and attic level. The first-floor window lights a staircase/landing. The attic window will presumably light the continuation of the staircase up to the attic (although such may already be in place: it was not possible to gain admission to the house on the date of site inspection by this Inspector). The applicant has indicated an intention to provide attic accommodation (as per application ref. F18B/0071) – subsequently invalidated by Fingal Co. Council. Condition 3 of the Notification of decision to grant planning permission required the first-floor window to be in obscured glazing, and the attic window to be removed and plastered over. Clearly the applicant has plans to use this attic level window in the future. However, such is not the subject of this current planning appeal. I note that both windows in this western elevation are in obscured glazing.

7.2.4. The appellant contends that the windows will result in overlooking of her house and garden. The appellant's house is set back further from the common boundary than is the house on the current appeal site. The gable elevations of the two houses address one another. There is a first-floor bathroom window in the gable elevation of the appellant's house (no. 26A) – and such is a common feature in other houses in Rivervalley Grove. This window is in obscured glazing. Apart from this, there are no other windows in the gable elevation of no. 26A. The staircase/landing window, within no. 26B, will allow an oblique view of the appellant's rear garden. There is space within the appellant's site to plant screen vegetation: however, such would take some time to mature. I would consider that compliance with condition 3(a) would be sufficient to safeguard the residential amenities of the appellant. Condition 3(b) would appear to be unduly onerous – notwithstanding that the window has been installed without planning permission. It is in permanently obscured glazing. A condition should be attached to any grant of permission requiring permanent obscured glazing in this window also – and that the window shall not be capable of being opened.

7.2.5. With regard to the 9m² single-storey lounge/dining extension to the rear of the house, I would consider that an extension of this nature can have no impact on the residential amenity of adjoining property. The roof of the extension is shallowly sloping, to match the roof of the adjoining single-storey extension to the rear of the house. There is a shed, with fully-hipped roof, within the rear garden of the appellant's property – in close proximity to the extension for retention. The location of this shed, together with additional timber fencing mounted on top of part of the common boundary wall, is more than sufficient to protect the privacy and amenity of the appellant's rear garden.

7.3. **Access & Parking**

Provision is made for two on-site parking spaces (and turning area), which is acceptable. The Transportation Planning Section of Fingal Co. Council had no objection to the proposal. There is pedestrian access to the rear garden from Forest Road. There is no footpath along the site side of Forest Road, but there is one immediately to the south, flanking the Boru Court housing development.

7.4. **Water**

The proposed revisions will not have any impact on water – apart from the requirement for an upsized surface water soakway – as adverted to in condition no. 6 of the Notification of decision to grant planning permission. Any grant of planning permission to issue from the Board should contain a similarly-worded condition. Irish Water indicated no objection to the proposed development.

7.5. **Other Issues**

7.5.1. Development Contribution

Condition no. 11 of the Notification of decision to grant permission required payment of a development contribution of €773. If the Board is minded to grant permission, then a condition should be attached requiring payment of a development contribution in accordance with the Development Contribution Scheme in place for the County.

7.5.2. Restriction on Exempted Development

Condition 5 of the Notification of decision to grant planning permission restricted the exempted development provisions of the Planning and Development Regulations, 2001, as amended, in relation to Classes 1 & 3 of Part 1 of Schedule 2. I would not consider that such is necessary for a detached house on a relatively large site. It would appear clear from the design of the house, and from the invalidated application ref. F18B/0071, that the applicant has intentions of extending habitable accommodation into the attic space. I would note that there are rooflights within the rear roof pitch of the appellant's house. Condition 4, requiring that the attic space shall not provide for any additional habitable space, would appear to be unduly onerous. Extension of a house into the roof-space makes economic sense, and good use of existing built fabric.

7.5.3. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

7.5.4. Appropriate Assessment

Having regard to the limited nature of the development for retention and completion, no Appropriate Assessment issues arise, and it not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects on an European site.

7.5.5. Boundary Wall with No. 26A

This 1.8m high boundary wall has been capped, but not plastered/dashed. It is not clear if the wall in in the ownership or part-ownership of the applicant. Where visible from the public road, the wall should be plastered/dashed or obscured with an hedge, as it is an eyesore at present. A condition should be attached to any grant of planning permission to effect this visual improvement.

8.0 **Recommendation**

I recommend that retention permission be granted for this development for the Reasons and Considerations set out below, and subject to the attached Conditions.

9.0 **Reasons and Considerations**

Having regard to the planning history of the site, and the nature and scale of the development for retention, it is considered that subject to compliance with the attached Conditions, the proposed development would be acceptable in terms of residential amenity.

10.0 **Conditions**

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to first occupation of the dwelling-house, and the development shall be retained and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The staircase/landing window, and window above it (both in the western elevation of the house), shall be in permanent obscured glazing, and the windows shall not be openable.

Reason: To protect the residential amenities of the house to the west.

3. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

4. On-site parking for at least two cars shall be provided within the curtilage of the site.

Reason: In the interest of traffic safety and visual amenity.

5. Where visible from the public road, the 1.8m high boundary wall with no. 26A Rivervalley Grove, shall be plastered/dashed prior to first occupation of the house, or an hedge shall be planted to entirely obscure the wall, within the first planting season following on from this grant of permission.

Reason: In the interest of visual amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In particular, the on-site surface water attenuation provisions shall be upscaled to reflect the increased run-off area which results from the increase in footprint of this house. Revised proposals, to comply with this requirement, shall be submitted to, and the written agreement of the planning authority obtained for such necessary works, prior to first occupation of the dwelling-house.

Reason: In the interest of public health and to avoid flooding.

7. Within the first planting season following on from this grant of permission, a hedge shall be planted along that portion of the eastern boundary, required to entirely screen the rear garden from view from Forest Road.

Reason: In the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act, 2000, as amended. The contribution shall be paid prior to the first occupation of the house, or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act, 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Michael Dillon,
Planning Inspectorate.**

19th November 2018.